

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE INSURANCE COMPANY OF THE STATE :
OF PENNSYLVANIA, :

Plaintiff, :

vs. :

ARGONAUT INSURANCE COMPANY, :

Defendant. :

12 Civ. 6494 (DLC)

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**DECLARATION OF SEAN THOMAS KEELY
IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Sean Thomas Keely declares under penalty of perjury as follows:

1. I am a partner at the law firm of Hogan Lovells US LLP, attorneys for defendant Argonaut Insurance Company ("Argonaut") in the above-captioned action. I am a member in good standing of the Bar of the State of New York and of this Court.

2. I submit this declaration in support of Argonaut's motion, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment dismissing the complaint filed by plaintiff The Insurance Company of the State of Pennsylvania ("ICSOP") based upon ICSOP's material breach of its contractual obligation to provide Argonaut with prompt notice of the claim at issue.

3. Annexed hereto as Exhibit 1 is a true and correct copy of excerpts from the deposition of Patrick DiCaprio, taken in this action on April 29, 2013.

4. Annexed hereto as Exhibit 2 is a true and correct copy of excerpts from the deposition of Chris Hollender, taken in this action on April 18, 2013.

5. Annexed hereto as Exhibit 3 is a true and correct copy of excerpts from the deposition of Chris Magnotta, taken in this action on April 12, 2013.

6. Annexed hereto as Exhibit 4 is a true and correct copy of excerpts from the deposition of Nadine Stuhr, taken in this action on April 20, 2013.

7. Annexed hereto as Exhibit 5 is a true and correct copy of a certificate of facultative reinsurance produced by Argonaut in this action bearing Bates stamp ARG00000371 – 00000380.

8. Annexed hereto as Exhibit 6 is a true and correct copy of excerpts from a “Special Participating Excess Reinsurance Agreement” produced by Argonaut in this action bearing Bates stamp ARG00003590 – 3595, and ARG00003569.

9. Annexed hereto as Exhibit 7 is a true and correct copy of a memo to file from Alicia Arencibia, dated August 8, 1988, produced by ICSOP in this action bearing Bates stamp ICSOP0031169 – 31175.

10. Annexed hereto as Exhibit 8 is a true and correct copy of a memo to file from Bart Tesoriero, dated March 28, 1989, produced by ICSOP in this action bearing Bates stamp ICSOP0077033 – 77035.

11. Annexed hereto as Exhibit 9 is a true and correct copy of a memo from “Toxic Tort Claims Dept.” to “Management”, dated September 30, 1991, produced by ICSOP in this action bearing the Bates stamp ICSOP0031002 – 31006.

12. Annexed hereto as Exhibit 10 is a true and correct copy of a file document produced by ICSOP in this action bearing Bates stamp ICSOP0105069 – 105088.

13. Annexed hereto as Exhibit 11 is a true and correct copy of a “Format Report” completed by Simon Yoon, dated February 11, 2002, produced by ICSOP in this action bearing Bates stamp ICSOP0075172 – 75175.

14. Annexed hereto as Exhibit 12 is a true and correct copy of a facsimile from Lynberg & Watkins, dated April 23, 2002, attaching “Defendant Kaiser Cement and Gypsum Corporation’s Cross-Complaint,” produced by ICSOP in this action bearing Bates stamp ICSOP0057009 – 57030.

15. Annexed hereto as Exhibit 13 is a true and correct copy of a file document produced by ICSOP in this action bearing the Bates stamp ICSOP0096491 – 96492.

16. Annexed hereto as Exhibit 14 is a true and correct copy of a letter from Lynberg & Watkins, dated December 12, 2005, produced by Argonaut in this action bearing Bates stamp ARG00001206 – 1217.

17. Annexed hereto as Exhibit 15 is a true and correct copy of a ruling and order from the Superior Court of California, dated January 10, 2006, produced by ICSOP in this action bearing Bates stamp ICSOP0066759 – 66776.

18. Annexed hereto as Exhibit 16 is a true and correct copy of an email from Wendy Schultz, dated July 2, 2008, produced by ICSOP in this action bearing Bates stamp ICSOP0007543 – 7544.

19. Annexed hereto as Exhibit 17 is a true and correct copy of an email chain, dated November 17 and 18, 2008, produced by Argonaut in this action bearing Bates stamp ARG00003659 – 3661.

20. Annexed hereto as Exhibit 18 is a true and correct copy of an “Executive Claim Summary,” dated March 12, 2009, produced by ICSOP in this action bearing the Bates stamp ICSOP0007561 – 7563.

21. Annexed hereto as Exhibit 19 is a true and correct copy of a memorandum from Patrick DiCaprio, dated April 30, 2009, produced by ICSOP in this action bearing Bates stamp ICSOP0098763 – 98764.

22. Annexed hereto as Exhibit 20 is a true and correct copy of an email with attachment from Nadine Stuhr, dated April 3, 2009, produced by ICSOP in this action bearing Bates stamp ICSOP0000031 – 0000038.

23. Annexed hereto as Exhibit 21 is a true and correct copy of an email with attachments from Linda Sefranka, dated April 27, 2009, produced by ICSOP in this action bearing Bates stamp ICSOP0000039 – 61.

24. Annexed hereto as Exhibit 22 is a true and correct copy of an email with attachment from Lauren Welch, dated June 12, 2009, produced by Argonaut in this action bearing Bates stamp ARG00000350 – 353.

25. Annexed hereto as Exhibit 23 is a true and correct copy of an email from Kimberly Costello with attachment, dated July 9, 2009, produced by ICSOP in this action on behalf of Guy Carpenter bearing the Bates stamp GC00005685 – 5688.

26. Annexed hereto as Exhibit 24 is a true and correct copy of a memorandum from Richard Kafaf with attachments, dated August 21, 2009, produced by ICSOP in this action bearing Bates stamp ICSOP0065818 – 65821.

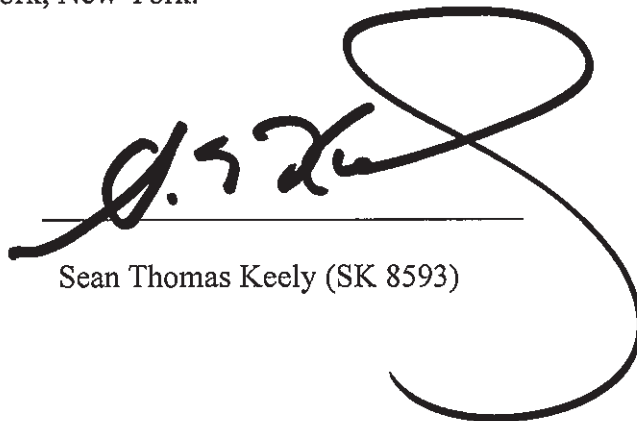
27. Annexed hereto as Exhibit 25 is a true and correct copy of an email from Kimberly Costello, dated August 3, 2009, produced by Argonaut in this action bearing Bates stamp ARG00000338.

28. Annexed hereto as Exhibit 26 is a true and correct copy of an email from Barbara Obecný, dated August 3, 2009, produced by ICSOP in this action bearing Bates stamp ICSOP0000062, and attached spreadsheet produced by ICSOP in native format bearing Bates stamp ICSOP0000085.

29. Annexed hereto as Exhibit 27 is a true and correct copy of a "Kaiser Cement Corporation Case Status Report," dated July 30, 2010, produced by ICSOP in this action bearing Bates stamp ICSOP0007339 - 0007345.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 17th day of May, 2013 at New York, New York.

A handwritten signature in black ink, appearing to read "S. T. Keely", is written over a horizontal line. A large, decorative flourish extends from the end of the signature, looping around and ending in a large 'S' shape.

Sean Thomas Keely (SK 8593)